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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

E-filing

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AVELINO LISING

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA,
OAKLAND DIVISION

AVELINO LISING,

Plaintiff,

v.

FINANCIAL ASSET MANAGEMENT

SYSTEMS, INC.,

Defendant.

Case No.: **10-02908**

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

VERIFIED COMPLAINT

AVELINO LISING (Plaintiff), by his attorneys, KROHN & MOSS, LTD., alleges the following against FINANCIAL ASSET MANAGEMENT SYSTEMS, INC. (Defendant):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq. (FDCPA).
2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. (RFDCPA).

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court

1 without regard to the amount in controversy,” and 28 U.S.C. 1367 grants this court
2 supplemental jurisdiction over the state claims contained therein.

3 4. Defendant conducts business in the state of California, and therefore, personal
4 jurisdiction is established.

5 5. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).

6 6. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202.

7 **PARTIES**

8 7. Plaintiff is a natural person residing in Fremont, Alameda County, California.

9 8. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3), and according to
10 Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. 1692a(5)
11 and Cal. Civ. Code § 1788.2(h).

12 9. Defendant is a debt collector as that term is defined by 15 U.S.C. 1692a(6) and Cal. Civ.
13 Code §1788.2(c), and sought to collect a consumer debt from Plaintiff.

14 10. Defendant is a national company with its headquarters in St. Charles, Missouri.

15 **FACTUAL ALLEGATIONS**

16 11. Defendant constantly and continuously placed collection calls to Plaintiff seeking and
17 demanding payment for an alleged debt.

18 12. Defendant has been placing collection calls to Plaintiff for nearly 3 months.

19 13. Defendant places one or two collection calls to Plaintiff daily.

20 14. Defendant places collection calls to Plaintiff from multiple telephone numbers including:
21 636-925-5305 and 636-925-5300.

22 15. Defendant places collection calls to Plaintiff on her home telephone: 510-713-0764.

23 **COUNT I**

24 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

25 16. Defendant violated the FDCPA based on the following:

a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural

consequence of which is to harass, oppress, or abuse Plaintiff.

- b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.

WHEREFORE, Plaintiff, AVELINO LISING, respectfully requests judgment be entered against Defendant, FINANCIAL ASSET MANAGEMENT SYSTEMS, INC., for the following:

17. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,
18. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k
19. Any other relief that this Honorable Court deems appropriate.

COUNT II
DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

20. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

21. Defendant violated the RFDCPA based on the following:

- a. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone to ring repeatedly and continuously so as to annoy Plaintiff.
b. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to Plaintiff with such frequency that was unreasonable and constituted harassment.
c. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 et seq.

WHEREFORE, Plaintiff, AVELINO LISING, respectfully requests judgment be entered against Defendant, FINANCIAL ASSET MANAGEMENT SYSTEMS, INC., for the following:

1 22. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices
2 Act, *Cal. Civ. Code §1788.30(b)*,

3 23. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection
4 Practices Act, *Cal. Civ Code § 1788.30(c)*, and

5 24. Any other relief that this Honorable Court deems appropriate.

6 **DEMAND FOR JURY TRIAL**

7 PLEASE TAKE NOTICE that Plaintiff, AVELINO LISING, demands a jury trial in this
8 cause of action.

9
10 DATED: June 21, 2010

RESPECTFULLY SUBMITTED,

KROHN & MOSS, LTD.

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12 By: 

13 Nicholas J. Bontrager
14 Attorney for Plaintiff
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VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF CALIFORNIA

Plaintiff, AVELINO LISING,, states as follows:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, AVELINO LISING,, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

DATE: 6-25-10



AVELINO LISING